

§ 26.23

specifies as much of it as is true and qualifies or denies the remainder; and

(iii) Does not assert lack of information or knowledge as a reason for failure to admit or deny, unless the party states that the party has made reasonable inquiry, and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny; or

(2) Written objections to a requested admission that:

(i) State the grounds for the objection; and

(ii) Object to a requested admission, if necessary, either in whole or in part, on the basis of privilege or relevance.

(b) Responses to the request for admission on matters to which objections have been made may be deferred until the objection is ruled upon, but if written objections are made only to a part of a request, a response to the remainder of the request shall be provided.

(c) Any matter admitted under this rule is conclusively established unless the hearing officer, on motion, permits withdrawal or amendment of the admission. Admissions obtained pursuant to this procedure may be used in evidence only for the purposes of the pending action. The use of obtained admissions as evidence is permitted to the same extent and subject to the same objections as other evidence.

HEARINGS

§ 26.23 Public nature and timing of hearings; transcripts.

(a) *Public hearings.* All hearings in adjudicative proceedings shall be public.

(b) *Conduct of hearing.* Hearings shall proceed with all reasonable speed. The hearing officer may order recesses for good cause, stated on the record. The hearing officer may, for convenience of the parties or witnesses, or in the interests of justice, order that hearings be conducted outside of Washington, DC, and, if necessary, in more than one location.

(c) *Transcripts.* Hearings shall be recorded and transcribed only by a reporter designated by the Department under the supervision of the hearing officer. The original transcript shall be a part of the record and shall constitute the sole official transcript. Any party

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or a member of the public, at his own expense, may obtain copies of transcripts from the reporter.

§ 26.24 Rules of evidence.

(a) *Evidence.* Every party shall have the right to present its case or defense by oral and documentary evidence, unless otherwise limited by law or regulation, to conduct such cross-examination and to submit rebuttal evidence as may be required for a full and true disclosure of the facts. Irrelevant, immaterial, privileged, or unduly repetitious evidence shall be excluded. Unless otherwise provided for in this part, the Federal Rules of Evidence shall provide guidance to the hearing officer in the conduct of proceedings under this part, but shall not be binding. Parties may object to clearly irrelevant material, but technical and hearsay objections to testimony as used in a court of law will not be sustained.

(b) *Testimony under oath or affirmation.* All witnesses shall testify under oath or affirmation.

(c) *Objections.* Objections to the admission or exclusion of evidence shall be in short form, stating the grounds of objections. Rulings on objections shall be a part of the transcript. Failure to object to admission or exclusion of evidence or to any evidentiary ruling shall be considered a waiver of objection, but no exception to a ruling on an objection is necessary in order to preserve it for appeal.

(d) *Authenticity of documents.* Unless specifically challenged, it shall be presumed that all relevant documents are authentic. An objection to the authenticity of a document shall not be sustained merely on the basis that it is not the original.

(e) *Stipulations.* The parties may stipulate as to any relevant matters of fact. Stipulations may be received in evidence at a hearing, and when received shall be binding on the parties with respect to the matters stipulated. The parties are encouraged to enter into stipulations of fact whenever possible.

(f) *Official notice.* All matters officially noticed by the hearing officer shall appear on the record.

(g) *Burden of proof.* The burden of proof shall be upon the proponent of an

action or affirmative defense, including, where applicable, mitigating factors, unless otherwise provided by law or regulation.

§ 26.25 Hearing officer's determination and order.

(a) *Scope of review.* The hearing officer shall conduct a de novo review of the administrative action to determine whether it is supported by a preponderance of the evidence, unless a different standard of proof is required by law or regulation. Each and every charge alleged by the Department need not be proven to support the administrative action. The hearing officer may modify or vacate the administrative action under review only upon a particularized finding of facts that justifies a deviation from the administrative action.

(b) *Closing of hearing.* At the discretion of the hearing officer, the closing of the record may be postponed in order to permit the admission of other evidence into the record. In the event further evidence is admitted, each party shall be given an opportunity to respond to such evidence.

(c) *Briefs.* Upon conclusion of the hearing, the hearing officer may request the parties to file proposed findings of fact and legal briefs. The hearing officer shall make a written determination and order based upon evidence and arguments presented by the parties. The determination shall be founded upon reliable and probative evidence. This determination and order shall be served upon all parties.

(d) *Bench decisions.* Where the parties agree and where appropriate in the judgment of the hearing officer, a bench decision will be issued.

(e) *Time period for issuance of decision.* The hearing officer shall endeavor to issue a determination within 60 days from the date of the closing of the record.

(f) *Finality of determination.* The determination and order shall be final unless a party timely appeals the determination in accordance with § 26.26. The determination shall inform the parties that, if provided for and consistent with Departmental regulations, any party may request, in writing, Secretarial review of the determination within 30 days after the hearing officer

issues the determination, in accordance with § 26.26 of this part. The determination shall include the mailing address, facsimile number, and electronic submission information to which the request for Secretarial review should be sent. A request for Secretarial review may be made by mail, delivery, facsimile, or electronic submission.

SECRETARIAL REVIEW

§ 26.26 Review of determination of hearing officers.

(a) Except in matters arising under 2 CFR part 2424, any party may file with the Secretary an appeal within 30 days after the date that the hearing officer issues a determination or order. The Secretary or designee may extend the 30-day period, in the Secretary's sole discretion, for good cause.

(b) *Brief in support of appeal.* The appeal shall be accompanied by a written brief, not to exceed 15 pages, setting forth the party's specific objections to the determination or order of the hearing officer and the party's supporting reasons for any objections. The appealing party may request leave to file a brief in excess of 15 pages for good cause shown. Alternative proposed findings and conclusions, if any, may be appended as an exhibit.

(c) *Briefs in opposition.* Any opposing party may submit a brief in opposition to the appeal, not to exceed 15 pages, within 20 days of receiving a copy of the appeal and accompanying brief. The opposing party may request leave to file a brief in excess of 15 pages for good cause shown. The brief in opposition shall specifically state the opposing party's reasons for supporting the hearing officer's determination, or for objecting to any part of the hearing officer's determination.

(d) *Service.* The appeal and all briefs shall be served on all parties and on the Docket Clerk.

(e) *Forwarding of the record.* Upon request by the Office of the Secretary, the hearing officer shall forward the record of the proceeding to the Secretary or the Secretary's designee.

(f) *Time extensions.* The Secretary, or designee, in his or her sole discretion, may extend the deadlines or page limitations set forth in paragraphs (b) and